NASCUS

August 25, 2008

Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Comments on Advanced Notice of Proposed Rulemaking for Part 723 Member Business Loans

Dear Ms. Rupp:

The National Association of State Credit Union Supervisors (NASCUS)[1] appreciates the opportunity to provide comments to the National Credit Union Administration (NCUA) concerning NCUA's Advanced Notice of Proposed Rulemaking (ANPR) on Part 723 Member Business Loans. Part 723 applies to federally insured, state-chartered credit unions (FISCUs) by incorporation through Part 741.203. State regulators are the primary regulators for state credit unions and work in partnership with NCUA to supervise the federally insured state credit union system. In most states, NCUA primarily relies on state regulatory exams to evaluate a state credit union's member business loan (MBL) program. Pursuant to Part 723.20, NCUA waived applicability of Part 723 for state credit unions in six states.[2]

NCUA's ANPR seeks comments on several specific issues related to member business loans and on the MBL regulatory framework in general. State regulators hold a variety of opinions on the extent and the manner in which credit unions engage in member business lending. However, state regulators appreciate the diversity of the credit union system and there is a general agreement that done properly and with commensurate expertise, member business lending can be managed safely and soundly. Furthermore, while some commenters may emphasize recent high profile credit union losses in MBL programs, NASCUS notes that losses by depository institutions in these economic times are hardly exclusive to the credit union system.

[1]NASCUS is the professional association of the 47 state credit union regulatory agencies that charter and supervise the nation's 3,400 state-chartered credit unions.
[2] Texas, Washington, Wisconsin, Connecticut, Oregon and Maryland.

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Loan to Value Ratio Requirements and Unsecured MBLs

In seeking comments regarding lowering borrower equity requirements, NCUA notes that many of the waivers provided for in the present MBL rule often go unused by credit unions. NASCUS offers no opinion on whether NCUA should alter the LTV ratios. From a regulatory perspective, support may be found for varying LTV ratios. In some respects, changing the base LTV ratio would be a distinction without a difference. More importantly is the ability of regulators to recognize credit unions with demonstrated ability to analyze and manage MBL and to provide those credit unions the flexibility to adapt to the marketplace in structuring loans.

Therefore, NASCUS recommends that NCUA streamline the waiver process. For state credit unions, MBL waivers should be effective upon approval by the state regulator. Currently Part 723.11 requires approval from the state regulator and the NCUA regional director. This dual approval process is cumbersome and disadvantages state-chartered credit unions. It unnecessarily delays the process and creates uncertainty for the credit unions while adding very little to effective regulatory oversight. If the Regional Director concurs with the waiver, as is almost always the case, the credit union has waited weeks or sometimes months for an approval that the credit union already had from the state. In those rare cases where the Regional Director may disagree, NCUA and the state regulator can work together to determine the best regulatory approach and if needed, can rescind a waiver.

In either case, there is no reason to make the credit union wait for two approvals of a simple waiver request.

Experience Requirement

NCUA seeks comment regarding whether Part 723's two-year experience requirement should be changed. NASCUS believes that NCUA erred by setting a two-year experience requirement. Member business lending can be complex and require a nuanced approach for safe and sound management. Some MBL programs may require significantly more than two years [Washington and Wisconsin require five years experience for construction and development lending], and in some cases, some MBL may be manageable with less than two years experience.

Rather than set a specific experience benchmark, one state submitting a state specific MBL rule pursuant to Part 723.20 created an experience requirement provision that required the credit union to rely on the expertise of someone with experience "commensurate" with the type of member business lending the credit union sought to manage. This approach was rejected by NCUA. NASCUS believes the commensurate experience standard is a more sound approach and NCUA should reconsider the commensurate experience standard.

By setting a "commensurate" standard, regulators can retain flexibility to require much higher experience levels for more complex lending. Conversely, credit unions seeking to begin small business lending could retain the flexibility to grow the experience in-house. The two-year requirement is an arbitrary standard and should be replaced by a commensurate experience standard.

Loan Participation

NCUA seeks comment on whether Part 723 and Part 701.22 Loan Participations should contain cross references. While FISCUs are required to comply with Part 701.22 in the MBL context, non MBL loan participation for FISCUs are not governed by NCUA. NASCUS cautions that any cross referencing to clarify MBL loan participation issues should be narrowly crafted and precisely worded so as to not inadvertently subject non MBL loan participations for state-chartered credit unions to Part 701.22.

General Comments

NCUA seeks comments in general about aspects of MBL regulation. NASCUS believes that in addition to clarifying some provisions of Part 723, NCUA should streamline the waiver process and should reduce regulatory burden by incorporating MBL provisions in full within Part 741 rather than by incorporation. By incorporating Part 723 in full within the insurance regulations, NCUA would make the rule more user-friendly. In addition, NCUA should note at the end of each section of the MBL rules whether the specific provision has a waiver eligibility. In the case of state-chartered credit unions, the waiver should be effective once approved by the state regulator.

NASCUS appreciates the opportunity to comment on NCUA's ANPR. Please do not hesitate to contact NASCUS to discuss our comments further.

Sincerely,

- signature redacted for electronic publication -

Brian Knight
Senior Vice President, Regulatory Affairs